

DECISION BELOW: 634 Fed.Appx. 698

LOWER COURT CASE NUMBER: 13-13906

QUESTION PRESENTED:

The defendant's mitigation in this Alabama death penalty case was based on severe mental health disorders that resulted from multiple head injuries. In response to the defense motion for a mental health expert, the trial judge appointed an expert who reported his findings simultaneously to the court, the prosecution, and the defense just two days before the sentencing hearing. Defense counsel had no opportunity to consult with the expert or have him review voluminous medical and psychological records that were not made available to the defense until the start of the sentencing hearing. Thus, as the dissent below noted, "McWilliams was precluded from meaningfully participating in the judicial sentencing hearing and did not receive a fair opportunity to rebut the State's psychiatric experts."¹

This meaningless expert assistance violated McWilliams's rights under *Ake v. Oklahoma*, 470 U.S. 68, 83 (1985), which held that when an indigent defendant's mental health is a significant factor at trial, the State must "assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." However, there is a division among the circuits with regard to this holding, which affects the type of expert assistance indigent defendants receive nationwide, in both capital and non-capital trials. Most circuits have held that an independent defense expert is required by *Ake*, but minorities of circuits, including the court below, have found that *Ake* is satisfied by an expert who reports to both sides and the court.

The questions presented are:

- (1) When this Court held in *Ake* that an indigent defendant is entitled to meaningful expert assistance for the "evaluation, preparation, and presentation of the defense," did it clearly establish that the expert should be independent of the prosecution?
- (2) Did the Alabama courts unreasonably apply *Ake* in finding that McWilliams's rights were satisfied when the only mental health expert he was provided distributed his report to all parties just two days before sentencing and was unable to review voluminous medical and psychological records?

¹ *McWilliams v. Comm'r, Ala. Dep't of Corr.*, 634 F. App'x 698, 716 (11th Cir. 2015) (Wilson, J., dissenting).

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

ORDER OF MARCH 6, 2017:

THE MOTION OF PETITIONER FOR APPOINTMENT OF COUNSEL IS GRANTED, AND STEPHEN B. BRIGHT, ESQUIRE, OF ATLANTA, GEORGIA, IS APPOINTED TO SERVE AS COUNSEL FOR THE PETITIONER IN THIS CASE.

CERT. GRANTED 1/13/2017